

REMARKS

Claims 13-19 are currently pending in the present application.

The Applicants respectfully request entry of the foregoing amendment to claim 13 to correct a grammatical error.

Claims 13-19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Publication No. 2003/0158632 ("Nierlich") in view of U.S. Patent No. 4,902,322 to Grinblat ("Grinblat") and U.S. Patent No. 5,351,712 to Houlihan ("Houlihan").

The Applicants respectfully request the pending rejection be reconsidered and withdrawn, on the grounds that the present invention's system operates on fundamentally different principles than the systems taught or suggested by the Nierlich, Grinblat and/or Houlihan references.

The Present Invention: The present invention is directed to a heating and cooling supply business method in which, *inter alia*: (i) a user's lease fees are based on energy use (e.g., the total energy used or the heating and cooling used), not on the number of heating or cooling units provided or the price of the units; and (ii) an administrator determines whether the number of units should be changed, based on the variation in the energy use.

With the present invention system, when the user's heating and cooling needs vary (for example, the heating and/or cooling loads decreased in relation to the number and capacity of the installed units), the *administrator* determines whether to alter the number and/or capacity of units deployed to the user's site.

By analogy, a similar vehicle lease system would result in a customer

being charged the same amount for the transport of 50 people from point A to point B, whether the vehicle provider (the “administrator”) decided to move 50 people in one 50-passenger bus, or in 10 five-passenger cars. In other words, the customer in this example would be charged for the total use (in people transported from A to B), while the determination of whether and how to alter the vehicle mix would be a matter reserved to the vehicle provider. Further, for example, in one approach to setting the lease charge, if the number of people to be moved varied to 48 people, the customer would be charged accordingly, while the vehicle provider would have the authority to change the vehicle unit mix based on the change on customer’s use.

Such a system is fundamentally different from a system in which the number and type of units is *fixed*, and the user is charged based on usage, such as when leasing a fixed number of copy machines and being charged based on the number of sheets copied. Rather, continuing the copier analogy, in a system similar to the present invention, the lease charge might be based on the number of sheets copied, but an administrator monitoring such use would determine the number and capacity of the copy machines based on the amount of the user’s copy usage.

Differences As Compared to the Cited References: In contrast to the present invention’s novel approach to energy distribution and charges, Nierlich teaches monitoring of the spot energy market price, and *cutting off* energy supply to customers when the market price exceeds a trigger price set by the customer.

Thus, Nierlich teaches *administrator* control of the *amount* of energy used

the customer (as compared to the present invention, where the *user* determines the energy demand, and the administrator juggles the unit mix to best meet the user's demand). Nierlich further teaches *user* determination of the criteria for making changes to the amount of energy supplied (*e.g.*, market price trigger point), as compared to the present invention, where the administrator determines *how* the demanded energy is to be supplied.

Thus, regardless of what the Grinblat and Houlihan references teach with regard to the substitution or addition of individual heating or cooling units¹, Nierlich's trigger-price energy cut-off system fails to teach or suggest any aspect of the present invention, such as claim 13's limitation: "wherein a variation in an amount of heating or cooling used by the user from each of plurality of units is monitored at an administrator side of the network, a determination of whether to change at least one of a number of units provided to the user and a unit capacity of at least one of the units is based on the monitored variation in the amount of heating or cooling used by the user." Accordingly, claim 13-19 are patentable under § 103(a) over any combination of Nierlich, Grinblat and Houlihan.

¹ In Grinblat, if a tenant desires a lower temperature in their premise, a supplemental air conditioner unit may be installed – here, the *user*, not a separate administrator, determines whether there is a need for a change in the number of air conditioners. Grinblat thus does not contain any suggestion of the present invention, let alone cure the deficiencies of Nierlich. In Houlihan, there is disclosed an apparatus which may be temporarily installed by a lessee desiring to reduce utility costs by reducing energy consumption. As with Grinblat, this is *user* determination of unit mix, not a determination by an administrator monitoring energy use and use variation to determine whether to add/remove and/or change unit capacity. Further, neither of these references provides any suggestion for the present invention's approach to determination of lease charges based on usage, usage variation, and/or unit maintenance in an *administrator*-controlled heating/cooling unit distribution system.

CONCLUSION

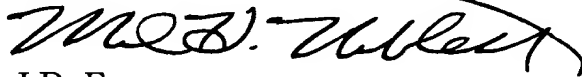
The Applicants respectfully request entry of the foregoing amendments, reconsideration and withdrawal of the pending § 103(a) rejection, and issuance of a Notice of Allowance for claim 13-19.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #199.49908).

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Respectfully submitted,



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